Supreme Court, U.S.
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No:

In The

Supreme Court of the United States

Lawson Alvin Rose,
Petitioner,

V

John E. Potter, Postmaster General,
Respondent

On Petition For Writ of Certiorari
To the United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Has the Seventh Circuit decided an important issue of law concerning how a Title VII Civil Rights violations complaint should be resolved in the Federal Court system in which the complaint is resolved not by rule of law or evidence presented, but by the whim of the government principals involved in the aforementioned complaint?

II. Is the District Court and the Seventh Circuit of the Federal Judiciary allowed to selectively or arbitrarily excuse one party in a federal lawsuit, (the government's attorney), from obeying established Federal Judicial Procedure for Civil Cases, while compelling the second principal, (the civilian plaintiff),in the same lawsuit to obey this same established procedure?

PARTIES

All parties are listed in the caption.

The Postmaster General of the United States will also be referred to as the " Postal Service ", or alternatively, as the " agency ".

`The Petitioner, Lawson Alvin Rose, will alternatively be referred to as the " Petitioner ".

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Manual of Employment Discrimination and Civil Rights Actions, &1:31.	*2*

CITATION TO OPINION

The Seventh Circuit's three-judge panel's Order and Judgment, handed down on February 3, 2004, has not been published. Pursuant to Rule 14(1)(i) of the rules of the Supreme Court, the order and judgment is reproduced in the Appendix (App. 4-9 Document I). The Petitioner's Petition for Rehearing and Rehearing En Banc was denied on May 24, 2004 and the order denying rehearing and rehearing en banc is also reproduced in the Petitioner's Appendix (App. 12 Document III).

JURISDICTION

The Seventh Circuit Court of Appeals entered it's judgment and order on February 3, 2004, and subsequently denied rehearing and rehearing en banc on May 24, 2004. Petitioner invokes this Court's jurisdiction under 28 U.S.C.&1254(1). Under Supreme Court Rule 13, the Petition is timely filed on or before August 22, 2004, ninety days from the date of the denial of rehearing.

STATUTORY PROVISIONS

Section 706(e) of Title VII, 42U.S.C. & 2000e-5(e)(1), provides in pertinent part:

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

However, in this case, " active measures " were taken by the defendant to stop the plaintiff from " suing in time ", therefore according to SHROPSHEAR v. CITY OF CHICAGO, ***Equitable Estoppel is applicable.***

STATEMENT OF THE CASE

Pro Se Petitioner Lawson Alvin Rose has been employed by the Postal Service since 1984 as a mail handler. Since my employment I have always been accommodated for my religion, (Seventh-day Adventist), from 1984 until 1989, under the Civil Rights statutes quoted herein, and from 1989 until 1996 under the collective bargaining agreement.

In 1992 while I was assigned to the loading docks, I was sexually discriminated against by supervision. This discrimination took the form of being assigned much heavier duties than the female mail handlers even though I had seniority on all except one of the four assigned to the loading docks. I filed a Sexual Discrimination complaint against the Postal Service in 1992.

The complaint was altered by the EEO office at the Postal Service, and then dismissed fraudulently in April 1993. When I proved to the EEO officer that the complaint had been dismissed fraudulently, I was suspended on false charges of threatening fellow postal employees. While I was off from work it was dismissed by another Final Agency Decision dated June 1993.

When I returned from suspension, I again attempted to get this claim resolved but the entire incident was " stonewalled " by the agency. The agency refused to take anymore action or give any information at all concerning

this complaint. It is this complaint that is the basis for this entire case.
This suspension was supposed to have been rescinded and removed from my record, but instead was
used as a motivating factor in my 1995 suspension and termination.

From September 1995 until November 1995, I was suspended once again on the charge of making threats to fellow postal employees. When the agency realized that I would not drop the charges and sign anymore agreements as far as this particular incident went, I was terminated on November 30 1995, and was off work until April 1996.

In August 1996, I was transferred to the new Chicago Central Postal Facility at 433 West Harrison Street.

I was unable to obtain a bid to accommodate my religion because of the large number of more senior mail Handlers, so I requested accommodation under the Civil rights as I had when I had initially become employed at the agency in 1984.

The Postal Service refused to follow the required procedures and protocols for denying my accommodation, choosing instead to merely state what they were required by law to demonstrate. As a result I was not accommodated until nine months later. This was intentional Retaliation and Religious Discrimination, and is fully documented.

X

This Writ for Certiorari is a direct result of the Postal Service's refusal to abide by established rules and procedures and Civil Rights laws of this country. -

RETALIATION COMPLAINT:

First, I must reiterate, I have absolutely no legal experience except what I have learned while litigating this case. This is the reason that I did not " catch " what the defendant and Judge Zagel were saying at first about there being no direct evidence of retaliation, and that I had to rely upon the indirect method. This is another misleading statement by both individuals. I point the Courts to App. 18 document VII. This document plainly and unequivocally proves the direct connection of my EEO complaint to both of my suspensions (1993 and 1995), and my termination in 1995, and Retaliation by the Postal Service. I.e. This is " direct evidence " as the EEO complaint is mentioned as a factor, therefore, the indirect method espoused by Ms. Kelly and Judge Zagel is totally inappropriate and not applicable to this particular situation. Furthermore, on App.19 document VIII even Judge Zagel states that the refusal by the agency to process my CA-2 forms constituted Retaliation. This verifies the bulk of my Retaliation complaint, but for some reason, not only Judge Zagel, but also the Appellate Judge panel of Easterbrook, Manion, and Evans totally ignore all of this evidence and grant Summary Judgment for the defendant, and affirm said Summary Judgment for the defendant respectively. The refusal to assign me to limited duty is a natural progression of the defendant's refusal to process my CA2 form in a timely manner. Therefore, the Appeal Court's claim that both my religious discrimination and retaliation claims hinge on the Service's alleged refusal to accommodate my need for Fridays off is misleading at best. To find out just exactly what my retaliation claim does hinge on, please see App. 20

document IX. As you can see, the courts, both District and Appeals have totally ignored evidence and parts of my complaint. Nevertheless, using Judge Zagel's own finding, App. 19 and 20 document VIII, and his own case citation, Stone v. City of Indianapolis Public Utilities Division, I should be awarded Summary Judgment on the Retaliation issue (see enclosed copy of Stone v. City of Indianapolis in App. 20 document X), as the only way that the suspensions from 1993 and 1995, and the termination from 1995 can be rebutted, is if the phrase, " The reason for this action is: On May 11, 1993 you came to me complaining about what E.E.O. was doing about your complaint of an injury to your back. ", were to be removed from the aforementioned suspensions. But then there would be no reason for the suspensions, would there?

Furthermore the very fact that the suspension from 1993 was supposed to have been rescinded, i.e. deleted from my personnel record is even more evidence of retaliation. (See App. 21 document XI)Even if it could be stated that I was suspended for making the threats alleged in this enclosure, this is still moot, as " retaliatory motive must play part, but need not be sole cause of adverse employment action. " (Davis v. State Univ. of N.Y., 802 F.2d at 642 (2nd Cir. 1986)(MANUAL ON EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS ACTIONS: Richey: section 1:31 " But for " the protected activity, i.e. EEO complaint, I would have had no reason to complain, and thus supervision would have had no reason to fabricate the false charges of making threats to supervision and my coworkers. The sole purpose of this adverse action was to dismiss the EEO complaint. And please remember, this suspension was supposed to have been removed from my record (App. 21 document XI) as there were absolutely no

threats made, and even if there were there was no way that it could have been proven.

RELIGIOUS DISCRIMINATION:

Since the main question in this particular case, as espoused by the courts, is the violation of a collective bargaining agreement which would interfere with a valid seniority system, let us take a look at this question and examine it logically.

Please see App. 22 document XII. This plainly states that I was number 602 out of 1098 in seniority under the collective bargaining agreement. 1098 – 602 = 496. I had seniority on 496 other mail handlers. But let us go even further. The first paragraph in App. 22 states that there were only 754 positions available. So 1098 – 754 = 344. Therefore, even with all of the collective bargaining positions taken, I still had seniority on 344 other mail handlers. Please be advised that there were actually no assignments for the 344 mail handlers, as well as for myself, i.e., no more spots, but plenty of excess mail handlers, therefore I " was slotted in a residual vacancy ". How can it possibly be stated that accommodating me by assigning me my requested days off would be violating anyone else's seniority if I had seniority over all of the remaining mail handlers, as well as taking the obvious excess of mail handlers into consideration, i.e. ' residual vacancy '? This logic makes absolutely no sense!

Are the courts stating that only those individuals with enough seniority under the collective bargaining agreement to receive their requested days off can be accommodated? If

so, then exactly what is the purpose of the Civil Rights act? This also makes no sense!

In their Decision of Appeal 03-1017, the appellate court panel of Easterbrook, Manion and Evans state that from 1984 to 1996 I was normally able to receive a shift that allowed me Fridays and Saturdays off. They insinuate that I bid for these days off because later in the same paragraph it is stated that in 1996 my bid was unsuccessful because of a large number of more senior mail handlers who had requested Fridays off. This is a half truth. From 1984 to 1989 I was accommodated for my religious beliefs under the civil rights statute, .i.e. I was an unassigned regular back then also. The first time I ever bidded for any assignment was in 1989, five full years after I was hired by the Postal Service.

Nevertheless, let us proceed to App. 23 document XIII. These protocols have been in effect in the Postal Service for years. On the first page , the last sentence in the indented paragraph plainly states, " If an agency cannot accommodate an employee or an applicant, it has a duty in a complaint arising under this sub-part to demonstrate it's inability to do so…" The last sentence in the second paragraph on page two states, " In short, where an accommodation cannot be made at the installation level, it is essential that reasonable efforts to accommodate the employee be undertaken at the sectional center, district, and regional levels. " The third paragraph is very explicit. " if an accommodation cannot be worked out by local and regional officials which satisfies the employee, the reasons therefore are to be clearly established and documented. …..The file should state, in detail and with precision, the reasons why the accommodation requested by the employee

would create " undue hardship on the business of the agency. " In this regard, mere inconvenience will not be deemed to satisfy this " undue hardship " test. Indeed, any accommodation is likely to cause some inconvenience to the employer and create a degree of resentment among other employees. Therefore the showing of more substantial adverse impact must be made in order to provide reasonable support for a refusal to accommodate." And finally, page four, the last paragraph. " Report, by memorandum, to the director, Office of Equal Employment Opportunity, all requests for religious accommodation. The memorandum should state the nature of the request, the efforts made to achieve an accommodation, and, either the nature of the accommodation arrived at, or the reasons why a satisfactory accommodation could not be arrived at……"

Now, let us examine the last page of App. 25 document XIV. Under C. " C. Accommodation of Religious Exercise. Federal law requires an agency to accommodate employees' exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations. Though an agency need not make an accommodation that will result in more than a de minimis cost to the agency, that cost or hardship must be real rather than speculative or hypothetical: the accommodation should be made unless it would cause an actual cost to the agency or to other employees or an actual disruption of work, or unless it is otherwise barred by law. " Under
" Examples ", (a) An agency must adjust work schedules to accommodate an employee's religious observance-for example, Sabbath or religious holiday observance—if an adequate substitute is available, or if the employee's

absence would not otherwise impose an undue burden on the agency. "

Now can we understand these statements? " FEDERAL LAW " requires accommodation, and the agency " MUST ADJUST " an employee's work schedule to accommodate an employee unless an undue hardship on the conduct of the agency's business can be demonstrated.

This is very explicit and clear. The " undue hardship " must be demonstrated or I must be accommodated. Although, the defendant's attorney and Judge Zagel, as well as the Appeals Court panel of judges have thus far found for the agency, the required protocols and procedures have not been obeyed or followed. I.e. In my case no substitutes were needed. The agency had an obligation to demonstrate its' inability to accommodate me. This demonstration or file has to have clearly established reasons documented with precision and detail as to why an accommodation could not be reached, and also how the accommodation would cause " undue hardship " on the conduct of the agency's business. To date, absolutely none of this documentation which is required, by law, to deny me a religious accommodation has ever been presented to myself or to anyone else. It has been stated more than once, but not demonstrated. I reiterate for the " umpteenth " time, " WHERE IS THE REQUIRED DOCUMENTATION??? Even Judge Zagel in his decision states that if I could establish a prima facie case, that the USPS must reasonably accommodate my religious observance unless it would result in an undue hardship. (please see Zagel's decision in the original brief submitted). Well, as the evidence shows, the prima facie case is and actually has been established from day one (please see page 15 the last paragraph in this brief.)Where is the demonstration of " undue hardship "?

To conclude, although the seniority system did dictate my days off under the collective bargaining agreement, this agreement has absolutely no influence on the requested accommodation under the Civil Rights statutes unless an " undue hardship " on the conduct of the agency's business can be demonstrated. Then and only then would the seniority come into play. And as stated earlier, even with all of the mail handler positions taken, I still had seniority on 344 other mail handlers. I inquire of you, which of these 344 other mail handlers seniority would have been violated if I was to have been accommodated (particularly taking into consideration the fact that the postal service was looking for places to assign these excess mail handlers and I was " slotted into a residual vacancy.")? It is really a nonsensical question, is it not? I ask again, where is all of this required documentation and demonstration of undue hardship on the conduct of the agency's business which the aforementioned enclosures and Title VII of the Civil Rights act mention as requirements to deny me an accommodation? I still await this demonstration after almost seven years.

DISCOVERY VIOLATIONS:

I will be brief and to the point. Any of the Court's opinions, District or Appeals, about whether I described which witnesses or evidence was relevant is moot.

In the last paragraph of the Appeals Court decision, it is stated that I was allowed access to the witnesses and documents that Judge Zagel believed were relevant to my case against the Postal Service, and that I was denied access to additional witnesses because I refused the Court's order

to explain the relevance of the witnesses or because the witnesses were no longer employed by the service.

Again the appeals court has totally ignored Rule 26 of the rules of procedure just as Judge Zagel did. (Please see App. 26 document XV.) This rule plainly and unequivocally states that it is the responsibility of the defendant to give me all of the relevant evidence, without awaiting a discovery request, and sets a time limit of ten days. All that has to be done to prove that the defendant has not obeyed the rules of discovery is to have him produce a list of all the relevant evidence that he provided to me without awaiting a discovery request. See App. 20 document IX, Anything remotely related to any of the complaints of retaliation enumerated in this paragraph, witnesses included, I should have received without providing a discovery request. This particularly applies to the supervisor's copy of the CA2 form which the agency refused to file, and which I requested no less than four times, twice before the relevant supervisor retired, and twice after she retired. The agency refused to even reply to any of these requests. Does this mean that the defendant does not have to follow the rules of discovery and produce evidence? Obviously, in this case it does, as you can see that the defendant never really has. If indeed, there are witnesses that are no longer employed by the Postal Service, this is also entirely the fault of the agency as it was solely the agency that refused to provide these witnesses as stipulated by the rules of discovery. (i.e.Without awaiting a discovery request=Intentional procrastination.) It appears that the federal courts have excused the defendant from following the rules of procedure while compelling myself to obey these same rules. The District and Appeals courts thus far, have also totally ignored evidence, and in some cases, their own case citations in order to deny me my rights under

the law. What this amounts to is an intentional refusal to make Discovery, as well as an intentional violation of my civil rights, and this with the blessing of the courts. Since Discovery has been intentionally violated, sanctions are highly appropriate.

Are the Courts allowed to excuse one party in a civil lawsuit from obeying the rules of procedure while compelling the second party to the lawsuit to obey these same rules? I think not!

This is why the Court's opinion that I refused to declare the relevance of any witnesses or evidence is moot. The defendant very seldom even obeyed the rules of discovery. If he had, there would have been no need for a single solitary discovery request.

SEX DISCRIMINATION:

Again the most important facts are overlooked and ignored by the Courts. 1) I did not file any case or complaint about anyone (Carmack) cursing me out. I filed a complaint about the inequitable assignment of duties between the male and female mail handlers on the platform. 2) If I did not file any such complaint, then how could I appeal something that I did not file?

The Courts also ignore the disingenuous manner in which the charge was dismissed, I.e. They first substituted their own charges for my own, and then dismissed their charges for a fraudulent reason. They also mention a Final Agency Decision dated June 1993, which I did not receive a copy of. This is obviously questionable. This case was

intentionally " stonewalled " and altered by the agency for the sole purpose of denying me my rights under the civil rights laws.

Finally, they also state " a plaintiff must exercise due diligence in pursuing his claim once any obstacles to suit have been removed ". Shropshear v. Corp. Counsel of City of Chic. 275 F.3d 593, 598-99 (7th Cir.2001). And I did not.

The Final Agency Decision rendered was not related to the complaint filed in any way other than it being a peripheral issue. Both the District and Appeals Courts as well as all of the other government principals that have been involved in the complaint, all refer to the Final Agency Decision dated April 1993, therefore the obstacles have never been removed, and still exist now, stated obstacles being the violation of my Civil Rights by the government, total disregard for judicial procedure and the Civil Rights laws by the government, and the legitimacy given to these egregious violations by the Federal Court system. As long as this particular Final Agency Decision (i.e. April 1993) is referred to by the government principals involved in this case, then the aforementioned obstacles remain.

Is the Postal Service's EEO office authorized by law to alter an individual's EEO complaint into something more suitable to the Human Resources office so that the altered complaint can be dismissed? If so, then I withdraw my complaint about the sexual discrimination charge. If not, then sanctions are highly appropriate.

Finally, in Shropshear v. Corp Counsel of City of Chicago, 275 F.3d 593(7th Cir.2001)(App. 33 document XIX), please note the following. (section C @TMA):

3. Limitation of Actions==13
Equitable estoppel permits plaintiff to avoid bar of statute of limitations if defendant takes active steps to prevent plaintiff from suing in time, as by promising not to plead statute of limitations.

This section plainly states that the statute of limitations can be avoided if the defendant has taken active steps to prevent me from suing in time. I submit that this is exactly what the defendant did when he altered my original complaint in the manner in which he did.

First the complaint was altered by the defendant, then the altered complaint was dismissed by the defendant. Next, when I proved that the defendant dismissed the altered complaint for a fraudulent reason, I was suspended and the altered complaint was dismissed while I was on suspension by a different Final Agency Decision dated June 1993.

If all of these steps which the defendant took in order to deny me my rights under the Civil Rights statutes are not active steps, as mentioned in the aforementioned limitation of actions sections, then exactly what is?

As stated earlier, what all of this amounts to is documented, intentional harassment, discrimination, and arrogant violations of my civil rights by the defendant and the federal judiciary.

I am totally dumbfounded as to how the courts made their decisions. They appear to have totally ignored all of the evidence and some of their own decisions and findings in most cases.

Therefore, the statement by Judge Zagel that my untimely appeal was unmitigated by tolling or waiver is a half truth, because as the evidence shows, Equitable Estoppel is clearly applicable in my case, as the obstacles have never been removed.

It is respectfully requested that the decision and affirmation of said decision by Judge Zagel and the appellate court be overturned.

The Reasons for granting this Writ.

It is imperative that we ascertain exactly what actually transpired in the case of the Sexual Discrimination complaint which was filed in 1992, as well as review the District and Appeals courts' decisions before the reasons for granting this writ can effectively be given.

Please see App. 30 document XVII, #2. Although the second page does state that Mr. Magee did not properly address the profanity portion, it also states that Mrs. Owens ***failed to fairly assign and equitably assign the jobs***. Under # 3 What was I seeking to resolve the complaint? I plainly state ***an agreement by management not to assign preferential work assignments inequitably, and in particular because of gender (italics supplied)*** . Now if we go back to the first page, under the name and title of the person which I believe responsible for the alleged acts of discrimination, I plainly state, Barbara Owens, Supervisor Mails.

Now it only stands to reason that if Barbara Owens is the party responsible for the alleged Act of discrimination, then the complaint must have been about the inequitable assignment of duties between male and female mail handlers, not any verbal assault as the postal service and the rest of the government principals involved in this case over the years have stated.

Furthermore, on App. 30-31, I enumerate what happened when a bedload of sacks came into the dock. This entire story, from the bottom of App. 30 until the bottom of App. 31 concerns the inequitable assignment of duties between male and female mail handlers.

At the bottom of App. 31 in italics, I plainly state that the complaint about unloading the trucks " ***led up to the swearing incident ". (italics supplied)***

This is all in the EEO file, so exactly how can an obvious complaint on "heavy lifting"/inequitable assignment of duties get transformed into a complaint about a swearing incident? All of this is nothing more than active measures taken by the defendant to stop me from suing in time. And this has been going on since 1992.

Judge Zagel, in his decision for the defendant, unequivocally states that "no heavy lifting complaint" was filed." App.13 through 15, document IV. The defendant's attorney, the EEOC in Washington, and the Appeals Court all refer to the same Final Agency Decision dated April 1993.

So, as you can see, even though all of the evidence verifies the fact that I had indeed filed a complaint about the

inequitable assignment of duties between male and female mail handlers, all of the government principals that have been involved with this case thus far prefer to accept the Postal Service's EEO office's fabricated, altered complaint about the swearing incident. This is the classic example in which Equitable Estoppel can be applied.

On App. 14, Judge Zagel states that my EEO complaint said absolutely nothing about a heavy lifting complaint, but instead referred to the verbal assault by a co-worker. He also stated that my documents which I submitted support this position. Well as you can see, this is just not so! How could he even make these types of statements? I fully explained this situation step by step in Document 53 of the record, but the good judge just ignored this fully documented explanation.

Summary Judgment of Retaliation and Religion.

Retaliation:

In App. 10, Judge Zagel states that I cannot establish a prima facie case of retaliation because I cannot offer any direct evidence. This is another false statement. Please see App. 18 -19 document VII. The statement is self explanatory.

It plainly states that the reason for the action, (emergency suspension), was because that I was complaining about what the EEO was doing about my back injury. The EEO complaint, i.e. "protected activity", was directly mentioned as a motivating factor in the suspension, therefore the statement by the defendant's attorney and

Judge Zagel that there is no direct evidence is also totally false. Furthermore, App. 19 document VIII, plainly states that the refusal by the Postal Service to process my CA2 form constituted retaliation. So how could he ignore his own finding and state that I could not establish a prima facie case of Retaliation?

App. 20 document X (***STONE v. CITY of INDIANAPOLIS PUBLIC UTILITIES DIVISION, 281 F.3d 640(7th Cir.2002)***states that if I present direct, uncontradicted evidence in support of a claim of retaliation, i.e. that I engaged in protected activity, and as a result suffered an adverse employment action, I am entitled to summary judgment.

Now how can this evidence presented be contradicted? Simply by showing that the suspension had nothing to do with the EEO complaint/i.e. protected activity. And how can we show that? Only by removing the phrase that states, " on May 11, 1993, you came to me complaining about what EEO was doing about an injury to your back. " See App. 34 document XX (@TMA section C, second and third pages).

Religious Discrimination:

See App.34-35 (@TMA section B first page)

Zagel also states that I cannot establish a prima facie case of religious discrimination.

I can establish a prima facie case of Religious Discrimination by showing that I have a bona fide religious belief that conflicts with an employment requirement, and I

have informed the employer of this belief, (App. 15-16 document V.), and I have been disciplined for refusing to comply with this conflicting employment requirement, (App. 17-18 document VI). Once a prima facie case has been established, then the employer must show that it has made a reasonable accommodation, or that one cannot be made without hardship on the operation of the agency. (Manual on Employment Discrimination and Civil Rights Actions: Richey: section 1:35) Where is the required demonstration?

This effectively repudiates all of Judge Zagel's reasons for granting summary judgment on all three counts of the complaint.

Now let us examine the Appeals Court decision. Zagel correctly states that if I could some how establish a prima facie case of religious discrimination, that the agency would be obligated to reasonably accommodate me. As you can see the evidence shows, the prima facie case has actually been established from " day one ", but I was never offered any type of accommodation whatsoever." Wangness v. Watertown School Dist. No 14-4 of Codington County, S.D., 541 F.Supp.332, 5Ed.Law Rep.402, 29Fair Empl.Prac.Cas..(BNA)375, 30Empl.Prac.Dec.(CCH) &33002 (D.S.D. 1982). See also American Postal Workers Union, San Franscisco Local v. Postmaster General, 781 F.3d 772, 39Fair Empl.Prac.Cas.(BNA)1847, 39 Empl.Prac.Dec.(CCH) &35863 (9th Cir. 1986) (undertake initial steps to reach reasonable accommodation).

When the Appeals Court sees that I have actually established a prima facie case, instead of them reversing the decision and remanding it to the District Court, they give

more false reasons for upholding the District Court's decision.

They also jumped on the ' no direct evidence " bandwagon, so their interpretation of the claim is also flawed, because as shown earlier, there is direct evidence.

As long as there is direct evidence, I need not show that some one else was treated differently, only that the direct evidence is uncontradicted. (Stone v. City of Indianapolis Public Utilities Division)

Do both my Retaliation and Religious discrimination claims really hinge on the service's refusal to accommodate my need for Fridays off (App. 7 second paragraph)? Of course not! Please see App. 20 document IX. This is a copy of the amended complaint's enumeration of my retaliation complaints.

Where is all of the discoverable evidence enumerated in App. 22-26 in documents XIII and XIV which pertains directly to my Religious Discrimination complaint?

Where is all of the discoverable evidence enumerated in App. 20 document IX? Particularly the supervisor's copy of the CA2 form which was requested under Discovery at least four times?

To date, none of this discoverable evidence has ever been presented to myself or anyone else.

To date, none of the demonstration of hardship to the conduct of the agency's business, which by the way, is required by law to deny me an accommodation, has ever been presented. It has been stated by more than one person, but never presented.

And now finally, the reason for granting this writ resides right within Rule # 10 of the Rules of the Supreme Court of the United States handbook which I received from the Supreme Court itself. On page five, under part III, Rule 10, Considerations Governing Review on Certiorari, it plainly states,

> " Review on a writ of certiorari is not a matter right, but of judicial discretion. A petition for a writ certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter, has decided an important federal question in a way that conflicts with a decision by a state court of last resort; ***or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;" (italics supplied).***

I submit to the Courts that this italicized portion of the quoted is exactly what has happened in this case thus far. Just by reading the evidence which I have used in this writ, it is obvious that this is the case. However, if the entire case file from the United States District and the Appeal and the Motion for Rehearing and Rehearing En Banc of the

Appeals Court, along with all of their accompanying documentation are studied, and the evidence which I have submitted carefully perused, and if the actions of the defendant's attorney, and both the District and Appellate courts are evaluated, there should be no doubt whatsoever that this writ should be granted.

For the reasons cited here, and the evidence submitted herein, Petitioner would respectfully, but strongly urge this Court to grant its Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX SECTION

Document#	Content
I	Decision on Appeal # 03-1017 By Appeals Judges panel.
II	U S District Court Decision on Summary Judgment for Religious Discrimination and Retaliation.
III	Decision by Appeals Court on Motion for Rehearing and Rehearing En Banc.
IV	U S District Court Decision on Summary Judgment for Sexual Discrimination.
V	My request to Plant Manager David Field's for an RDO Change because of Religious Accommodation.
VI	Absence Review Committee Writes me up for refusing to Violate my religious beliefs.
VII	The write up from 1993 for Alleged threats to fellow Postal workers.

Appendix 2

VIII Judge Zagel's statement that A refusal to file my CA2 form Constituted Retaliation.

IX Statement from my amended Complaint which enumerates all Of my Retaliation complaints.

X Statement from Stone v City of Indianapolis Public Utilities Div. About uncontradicted evidence Leading to summary judgment.

XI Copy of Grievance agreement From 1993 suspension by Union Steward Lillian Phillips and Agency Representative Ronald Pope.

XII Statement from Agency about Number of jobs as opposed to The number of Mail handlers.

XIII Statements from USPS Employee and Labor Relations Group in Washington, DC about Regional Guidelines for Religious Accommodation Within USPS.

XIV Federal Guidelines on Religious Exercise and Religious

Appendix 3

	Expression in the Federal Workplace dated 1997.
XV	Partial excerpts from rule 26 Governing discovery from Federal Procedural Manual For Civil cases.
XVI	Final Agency Decision from April 1993.
XVII	Selected excerpts from my 1992 EEO case file.
XVIII	Letter from Appeals Processing Center of the Great Lakes/ Midwest area which names the Final Agency Decision as being Dated in June 1993 instead of April 1993.
XIX	Excerpts from Shropshear v City Of Chicago concerning Equitable Estoppel.
XX	Excerpts from " Manual on Employment Discrimination and Civil Rights Actions. " (The

Appendix 4

Latest manual has these Quotations in Section 1:31 for Retaliation and Section 1:35 for Religious Discrimination. These particular quotations are from the prior Manual.)

***AEL---The original Appendix and enclosure list submitted with the original Appeal.**

@TMA—The Appendix at the end of the Motion for Rehearing and Rehearing En Banc.

In both cases, the numbers/letters following the identifying appendix letters are the actual location in each respective appendix.

I

The U S Court of Appeals Ruling.

UNPUBLISHED ORDER

Not to be cited per Circuit Rule 53

Appendix 5

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Before

Hon. Frank H. Easterbrook, Circuit Judge
Hon. Daniel A. Manion, Circuit Judge
Hon. Terence T. Evans, Circuit Judge

No. 02-1017

Lawson Alvin Rose
Plaintiff-appellant

Versus

John E. Potter, Postmaster General
Defendant-appellee

Appeal From the U S District Court case # 97 c 8681.

James B. Zagel, Judge

ORDER

Lawson Alvin Rose, a postal worker, sued the United States Postal Service under title VII, alleging that the Service retaliated against him for filing a complaint with the EEOC and discriminated against him on the basis of his religion by refusing to give him a shift schedule without Fridays. Rose also claimed gender discrimination on the ground that he was assigned to perform heavier

physical duties than women. The District Court granted summary judgment for the defendant, and we affirm.

After examining the briefs and record, we conclude that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed.R.App.P.34(a)(2).

As a Seventh-day Adventist, Rose states that he cannot work on the Sabbath, from sunset on Friday to sunset on Saturday. He has thus always bid for a shift without Fridays or Saturdays in accordance with the collective bargaining agreement between the Service and his union that allows more senior employees to receive their preferred shift. From 1984 to 1996 Rose, a mail handler of average seniority, was normally able to receive a shift that allowed him Fridays and Saturdays off. However, when Rose was assigned to newly built Chicago Central mail handling facility in 1996, his bid for a no-Friday shift was unsuccessful due to large number of more senior mail handlers who had requested Fridays off. After Rose failed to receive his desired shift, he used his vacation time on Fridays. When that ran out, he took leave without pay. The service then charged Rose with being Absent Without Leave; this charge was later reduced to a more informal "on the job discussion" between management and Rose regarding his work attendance.

Rose sued the Postal Service in December 1997. The District Court granted partial summary judgment on Rose's gender discrimination claim because Rose failed to file a timely appeal with the EEOC. The court

subsequently granted summary judgment to the Service on Rose's remaining claims, holding that Rose could not establish a prima facie case of retaliation because he had not shown that a similarly situated employee had been treated differently that him under the seniority bidding system, and that he could not prove a claim of religious discrimination because Title VII did not require the Service to violate its seniority system to accommodate his religious beliefs.

On appeal Rose first challenges the district court's decision on his claim of religious discrimination, arguing that he had made out a prima facie case and disproved the Service's claim that it would have suffered an undue hardship had another employee taken his Friday shifts. Rose also contests the court's decision that he had not made out a prima facie case of retaliation arguing that he was the only employee to have filed a complaint of gender discrimination with the EEOC and then be refused a religious accommodation.

Rose's religious discrimination and retaliation claims both hinge on the Service's alleged refusal to accommodate his need for Friday's off, because Rose points to the refusal as the Service's discriminatory and retaliatory act. But he cannot prove that the refusal was discriminatory or retaliatory because he received his schedule through the neutral seniority bidding system established by a collective bargaining agreement. The Service's refusal to deviate from this system to

"accommodate" Rose's beliefs does not establish a claim of religious discrimination, because Title VII does not require an employer to interfere with a valid seniority system in the interests of religious accommodation. US Airways, Inc. v. Barnett, 535 U.S.391, 403 (2002); Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 79(1977). Similarly Rose has not proven a claim of retaliation because the seniority system not the Service, dictated his schedule, and Rose never argued that the Service applied the system in an arbitrary manner so as to treat him differently than other similarly situated employees. See ;Sitar v. Ind. Dep't. of Transp., 344F.3d720, 728(7th Cir.2003)

Rose next argues that the district court erred in granting summary judgment on his gender discrimination claim because the Postal Service "stonewalled" his EEOC complaint to prevent him from timely filing an appeal. According to Rose, the Service misrepresented to him for several months that his complaint was still pending when in fact it had been dismissed. However, Rose concedes that he received written notice that the Service had reached a final decision, and that he knew he had thirty days to appeal the decision to the EEOC or ninety days to file suit, see 20C.F.R.&1614.402(a);42U.S.C.&2000e16(c), yet he delayed filing any appeal for more than three years. Although time limits for initial claims of employee discrimination are subject to equitable estoppel and tolling, see White v. Bentsen, 31F.3d 474, 475(7th Cir.1994), a plaintiff must exercise due diligence in

pursuing his claim once ant obstacles have been removed, see Shropshear v. Corp. Counsel of City of Chic., 275 F.3d 593, 598-99(7th Cir.2001), and here Rose did not.

Finally, Rose broadly attacks the district court's and the service's behavior in delaying and generally obstructing discovery in his case. However, Rose does not specify how the district court erred or how it's rulings prejudiced his case. See Local 744, Int'l Bhd. Of Teamsters v. Hinckley & Schmitt, Inc., 76 F.3d 162, 165(7th Cir.1996). The district court allowed Rose access to those witnesses that he believed were relevant to his case against the Service. When the district court refused to compel the Service to provide Rose access to additional witnesses, it did so because Rose had refused the court's order to explain the relevance of the witnesses or because the witnesses were no longer employed by the Service.

AFFIRMED.

II

The U S District Court Decision on Summary Judgment for Religious Discrimination And Retaliation

ROSE v POTTER 97c8681 Judge Zagel

Lawson Rose, a mail handler for the United States Postal Service("USPS"), has sued his employer for retaliation and religious discrimination under Title VII. As

a mail handler, Rose is subject to a collective bargaining agreement establishing a non-discriminatory bidding system for work schedules based on seniority. There is no guarantee that one's bid will be successful. Based on his seniority, Rose was unable to bid into a position with Fridays off. As a Seventh-day Adventist, he made a request for accommodation for Friday nights off but never heard about what happened to this request. Rose alleges that his inability to get accommodation was in retaliation for a separate EEO charge of gender discrimination in April of 1992 and from a 1995 termination that was eventually rescinded. Potter has moved for summary judgment.

Summary judgment is appropriate on the retaliation claim because Rose cannot establish a prima facie case. Rose may prove retaliation claim by using the indirect method of proof, which must be employed here because he offers no direct evidence. Stone v City of Indianapolis Public Utilities Div., 281 F.3d, 640, 644(7th Cir.), cert. denied, 123 S.Ct.79(2002). Under this method, Rose must first establish a prima facie case of retaliation by showing that after filing a discrimination charge against the USPS, only he, and not any similarly situated employee not filing a charge, was subjected to adverse employment action even though performing his job satisfactorily. Stone, 281F.3d at 644. He no longer needs to show "even an attenuated causal link" between opposing discrimination and suffering adverse employment action. Id. However, Rose cannot establish this initial burden because he fails to show that any other similarly situated employee was treated differently (i.e. that someone in the position of mail handler and under the same supervision was granted

Friday evenings off when that employee did not bid into that position or have the seniority to do so). See Patterson v. Avery Dennison Corp., 281F.3d 676(7th Cir. 2002).

Regarding Rose's claim of religious discrimination, summary judgment is appropriate because accommodating Rose's religious observation would cause the USPS undue hardship. See Moore v. A.E.Stanley Mfg. Co., 727 F.Supp. 1156, 1161 (N.D. Ill.1989))"undue hardship that would result from any of the proposed accommodations is an adequate and independent ground on which to grant the defendant's motion for summary judgment"). If Rose could somehow establish a prima facie case for religious discrimination, the USPS must reasonably accommodate his religious observance unless it would result in an undue hardship. See Rodriguez v. City of Chicago, 156 F.3d 771, 775(7th Cir.1998). Anything more than a de minimis cost on the employer, including disturbing the job preference of other employees, constitutes undue hardship. Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84, 81(1977). Title VII does not "require an employer to discriminate against some employees in order to enable others to observe their Sabbath." Id. At 84. Importantly, accommodation does not require the USPS to take steps inconsistent with an otherwise valid collective-bargaining agreement or a seniority system. Id. At 82. Even if the USPS failed to accommodate Rose, doing so does not violate Title VII because the statute does not require accommodation where it would force the USPS to break from it's routine seniority system and discriminate against those employees with more seniority than Rose.

For the foregoing reasons, *Potters Motion for* Summary Judgment is GRANTED.

Potter's motion raises several other obstacles to a prima facie case, but I refrain from addressing these issues because summary judgment is appropriate solely on the failure to show that any other employee was treated differently.

Whether religious discrimination is a separate claim is unclear, but for the purpose of this motion, I assume that plaintiff makes a separate claim.

III

U S Court of Appeals Decision on Rehearing and Rehearing En Banc

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

24 May 2004
Before
Hon. Frank H. Easterbrook, circuit judge
Hon. Daniel A. Manion, circuit judge
Hon. Terence T. Evans, circuit judge

No. 03-1017

Lawson Alvin Rose
Plaintiff-appellant

Appeal from the U S
District Court for the

Appendix 13

Versus

Northern District of Illinois, Eastern Division.

John E. Potter
Defendant-appellee

No. 97 c 8681

James B. Zagel, Judge

ORDER

On 19 March, 2004, the plaintiff-appellant filed a petition for rehearing and rehearing en banc. All the judges on the original panel have voted to deny a rehearing, and none of the judges in active service have requested a vote on the petition for rehearing en banc. The petitions for rehearing and rehearing en banc are therefore DENIED.

IV

U S District Court Decision of Summary Judgment Motion of Sexual Discrimination

ROSE v. USPS 97 c 8681 Judge Zagel

This is a complaint by a postal worker against the United States Postal Service ("Postal Service"). Originally the case was before another judge in this court, who appointed counsel in February 1998. An amended complaint was filed. In May 1998, appointed counsel was relieved of the appointment, and the court declined to

appoint a new counsel. The Postal Service seeks partial summary judgment.

Plaintiff Lawson Rose ("Rose") claims gender discrimination under title VII, 42 U.S.C.&&2000e et seq. on grounds that he was assigned to perform heavier physical duties than women. This led to a back injury. The Postal Service says this claim cannot be heard because (1) Rose did not appeal the Postal Service's Final Agency Decision in a timely manner, and (2) he failed to include the charge when he did appeal to the Equal Employment Opportunity Commission (EEOC).

The Final Agency Decision issued 15 April 1993 and was received by Rose on 23 April 1993, along with information about the available time period for an appeal to the EEOC or to a court (30 days). He had received the same information from the EEO officer in a letter prior to decision. Rose waited until December of 1996 to appeal to the EEOC, which rejected his claim twice on grounds of untimeliness unmitigated by tolling or waiver. His EEO filing said nothing about what I refer to, colloquially, as his "heavy lifting" claim; rather, it complained about a named female co-worker who verbally attacked him.

Rose responds with a barrage of documents, many of which confirm the factual position of the postal Service. On occasion when Rose is concerned about the legal consequences of the facts he has conceded, he will deny them. His documents also recite a history (about the truth of which I render no decision) of many unrelated grievances against the Postal Service. He assumes that any statement by the Postal Service he thinks incorrect is a deliberate lie, as opposed to a simple mistake. The

response to the summary judgment motion is confused and inadequate.

The rules are clear that postal service employees must comply with administrative time limits or waive their right to file suit, see Bohac v. West, 85F.3d 306, 310-11 (7th Cir. 1996);McGinty v. U.S. Department of the Army, 900 F.2d 1114 (7th Cir. 1990), and must confine their claims in court to the claims made in the EEOC filing. See Cheek v. Western & Southern Life Ins. Co., 31 F.3d 497(7th Cir. 1994); Kirk v. Federal Property Management Corp., 22F.3d 135(7th Cir. 1994).

Rose clearly fails on the point that his EEO claim did not include the claim he wishes to raise here. His argument that he filed his appeal late because he had been told by an unnamed EEO officer that he could wait to appeal also fails. The written notice was clear, and Rose had no right to rely on an oral modification of that notice in a case in which he has repeatedly asserted that the Postal Service and its personnel have consistently lied to him. If he believes what he has alleged about the integrity of the Postal Service, then he has no right to claim reasonable reliance on the representations of its other employees.

The defendant's Motion for partial summary judgment on Count C is granted.

The plaintiff's motion to compel discovery is denied as unduly burdensome and unlikely to lead to the discovery of relevant evidence.

V

(*AEL Enclosure (1) first page)

To: David Fields, Plant Manager, USPS

Appendix 16

433-35 West Van Buren
Fourth Floor
Chicago, Illinois 60607

From: Lawson Alvin Rose, Reg.Mail Handler

Subject: Change of RDO, request for.

Dear Plant Manager Fields,

During the week of 07 April 1996, I received word that since I had failed to receive a bid assignment, that I was now considered an unassigned regular. It was further stated that my nonscheduled days and starting time had been changed to Saturday and Thursday, and to 1700 hours from Saturday and Friday, and 1500 hours respectively. This brings me up to the reason for this request.

For the past twenty two years, I have been a member of the Seventh-day Adventist Church. During the hours encompassed by the period from sunset Friday through sunset Saturday, because of my biblical beliefs, and thus Religious Conviction, I cannot perform any type of labor unless it be humanitarian. (i.e. Fireman, Police officer, Ministry etc.)

It is therefore requested that my non scheduled days be returned to Saturday and Friday.

Your understanding and any assistance in this matter would be greatly appreciated and would earn my eternal gratitude.

Sincerely
Lawson Alvin Rose
816 South Adams 405B
Westmont, IL 60559

VI

(*AEL enclosure (2))

Absence Review Committee-Tour Three:
Chicago Central Facility
Processing and Distribution Center

United States Postal Service---

Date: November 3, 1996
Our Ref: PD:VBRIDGES:jmb
Subject: Letter of warning-AWOL

To: Senior Manager, Distribution Operations, Tour 3.

RE: ROSE. L.A. MAILHANDLER(FT) ssn---6948
PAY LOCATION: 660

In accordance with Article 16 of the National Agreement, this letter of warning is issued to you because of your being absent from your scheduled tour of duty without permission on the following dates:

Appendix 18

Dates	Hours used	Type of leave
8/30/96	8	AWOL
9/6/96	8	AWOL
9/13/96	8	AWOL
9/20/96	8	AWOL
9/27/96	8	AWOL
10/4/96	8	AWOL
10/11/96	8	AWOL
10/18/96	8	AWOL
10/25/96	8	AWOL

On the above dates you failed to rep[ort for your regular scheduled tour of duty. Upon your return to duty, no acceptable substantiation was submitted for your absence. Therefore, the leave was disapproved and the absence charged to AWOL.

This letter of warning is give to afford you an opportunity to correct the irregularity noted above. Employees are required to regular in attendance (Section 666.81 Employee and Labor Relations Manual).

It is hoped that this letter of warning will impress upon you the need to correct the deficiency as stated above.

(*AEL Enclosures (13) and (30) fourth page)

Appendix 19

ALL BARGAINING UNIT EMPLOYEES-
VETERAN.

Date prepared: 11 May 1993

Subject: Emergency Placement on off-duty status.

To: Lawson A. Rose SSAN:-------6948
Regular Mail Handler Pay Location: 796

You are hereby notified that you will be placed in an off-duty (without pay) status effective 11 May 1993 and continue in this status until you are advised otherwise.

The reason for this action is: ***On May 11 1993 you came to me complaining about what E.E.O. was doing about an injury to your back. (italics supplied).***

You stated that you used to be in a gang and that you were going to get a gun and f these women keep messing you, you were going to slap them. You also said that you could get a hit man because you know some certain people who will do it for you.

You have the right to file a grievance under the Grievance Arbitration procedure as set forth in Article 15, Section 2 of the National Agreement within fourteen (14) days of your receipt of this notice.

By: Eddie D. Poe, supervisor. Approved by:
For: Lawrence Pettis, supervisor. Cheryl Johnson-

Appendix 20

Vaughn. MDO

VIII

(*AEL Enclosure (36))
(Last paragraph)

----------I have already found that plaintiff stated facts sufficient to support a claim that the refusal to process his claim constituted retaliation. Plaintiff is entitled to: (1) some showing of the length of time it took defendant to submit other claimants' CA2 forms to the Department of Labor's Office of Worker's Compensation Programs; or (2) an explanation as to why this information is not available.

IX

(*AEL Enclosure (9) page five number 20)
(@TMA Section A, first page, Number 20)

In Direct retaliation for opposing actions prohibited by Title VII, Plaintiff was subjected to adverse employment actions including, inter alia, false accusations that he threatened supervisors, placement in off-duty status on two occasions because of those accusations, reassignment to a schedule that did not accommodate his religious beliefs and refusal to accommodate ROSE'S beliefs, refusal to process ROSE'S workers compensation claim, and refusal to assign ROSE to limited duty.

X

(@TMA Section A, Fifth page, second paragraph)

Appendix 21

Employee who presents direct evidence, in support of claim of retaliation in violation of ADA or Title VII, that he engaged in protected activity and as a result suffered adverse employment action of which he complains, ***if uncontradicted, is entitled to summary judgment. (italics supplied)*** (Stone v. City of Indianapolis Public Util. Div.)

XI

(*AEL Enclosure (28) second page)

United States Postal Service/Chicago Division
Chicago, Illinois 60607-9403

June 25, 1993
Ref: HR2:RPOPE:RP
Subject: Grievance Code: 16.7000
Step 2 Grievance Decision
Grievance No.93-1027

To: Union Steward Lillian Phillips Mail Handler
9045 South Western Avenue
Chicago, IL 60620-6133

Name of Grievant: Lawson Rose p/l 796 SSN: ------6948

Reason for grievance: Emergency placement in off-duty status, dated May 11, 1993, for threats of violence to Postal employees.

Decision:

Appendix 22

As a Final, complete settlement of the subject grievance, without prejudice to the position of either party in this or any other case, and without the understanding that this settlement will not be regarded as a precedent in any other case, the following resolution has been reached between the parties, in a step 2 discussion held June 23, 1993.

The emergency placement in an off-duty status dated May 11, 1993, for Threats of violence to Postal employees will be RESCINDED. The Grievant will receive back pay for the period he was in a non-pay status. That period of time is from May 11, 1993, through June 16, 1993 (36 days).

RONALD POPE 6/28/93 Management Step 2 designee	LILLIAN PHILLIPS 6/28/93 union step 2 Designee

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XII

(*AEL Enclosure (3) first paragraph)

----------There were 1100 Mailhandlers at that time in the old facility, and the number needed for the new facility was 754. Yet All 1100 Mailhandlers were to be assigned at the new facility.----------The appellant was number 602 out of 1098 in seniority. The appellant, in accordance with the national agreement, became an unassigned regular and was slotted in a residual vacancy effective August 3, 1996. This date is four months after his reinstatement.

XIII

(*AEL Enclosure (8))

Appendix 23

United States Postal Service
Employee and Labor Relations Group
Washington, DC 20260

Regional Guidelines/Accommodation to Employees Religious Needs.

(First Page, Second Paragraph)

" Make Reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the agency. ***If an agency cannot accommodate an employee or applicant, it has a duty in a complaint arising under this sub-part to demonstrate it's inability to do so. (italics supplied)*** "

(Second Page, Second paragraph)

" The critical question is whether there is any rational basis for making accommodation possible, and that question must be answered with reference to the Postal Service as a whole and not merely upon consideration of a particular installation. Thus, if a small installation is unable to accommodate the religious needs of a Sabbatarian, but a much larger neighboring installation can, the Postal Service will not be excused from it's duty to accommodate merely because the local installation head did not have independent authority to

effect a transfer. The matter must be brought to the attention of those officials at the appropriate management level who have such authority. ***In short, where an accommodation cannot be made at the installation level, it is essential that reasonable efforts to accommodate the employee be undertaken at the sectional center, district, and regional levels. (italics supplied)*** "

(Second page, third paragraph)

" If an accommodation cannot be worked out by local and regional officials which satisfies the employee, the reasons therefore are to be clearly established and documented. The relevant case file should contain copies of all correspondence and memoranda of all discussions with the employee which were involved in the effort to reach a satisfactory understanding. The file should state, in detail and with precision, the reasons why the accommodation requested by the employee would create "undue hardship on the business of the agency." In this regard, mere inconvenience will not be deemed to satisfy the "undue hardship" test. Indeed, any accommodation is likely to cause some inconvenience to the employer and create a degree of resentment among other employees. Therefore the showing of a more substantial adverse impact must be made in order to provide reasonable support for a refusal to accommodate. "(italics supplied)

(Fourth Page, last paragraph)

Appendix 25

" ***Report by memorandum, to the Director, Office of Equal Employment Opportunity, all requests for religious accommodation. The memorandum should the nature of the request, the efforts made to achieve an accommodation, and either the nature of the accommodation arrived at, or the reasons why a satisfactory accommodation could be arrived at.*** Such information should permit Headquarters Employee and labor Relations to assess the scope of the problem and provide specific guidance as needed. " ***(italics supplied)***

XIV

(*AEL Enclosure (37))
" Guidelines on Religious Exercise and Religious Expression in the Federal Workplace. (August 14, 1997) " (actual page not numbered)

" ***C. Accommodation of Religious Exercise. FEDERAL LAW requires an agency to accommodate employee's exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations. Though an agency need not make an accommodation that result in more than a de minimis cost to the agency, THAT COST MUST BE REAL RATHER THAN SPECULATIVE OR HYPOTHETICAL: the accommodation should be made unless it would cause an actual cost to the agency or to other employees or an actual disruption of work, or unless it is otherwise barred by law. "(italics and capitals supplied)***

Appendix 26

" Examples

(a) An agency MUST ADJUST work schedules to accommodate an employee's religious observance-for example, Sabbath or religious holiday observance if an adequate substitute is available, or if the employee's absence would not otherwise impose an undue burden on the agency. " (italics and capitals supplied)

XV

(*AEL Enclosure (10))
Partial reproduction of Rule 26 governing Discovery from the manual " Federal Civil Judicial Procedure and Rules " page 109.

RULE 26. General Provisions Governing Discovery; Duty of Disclosure.
(a) Required Disclosures; Methods to Discover Additional Matter.

(1) **Initial Disclosures.** Except to the extent otherwise stipulated or directed by order or local rule, a party shall, ***without awaiting a discovery request, provide to other parties:***

(A) the name, and if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleading, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(D)---------Unless otherwise stipulated or directed by the court, these disclosures shall be made at or within 10 days after the meeting of the parties under subdivision (f).

XVI
(*AEL Enclosure (11))

United States Postal Service
Chicago District
Equal Employment Opportunity Case

In the matter of:

Lawson A. Rose,
Complainant,

V.

Case#:4-D-1576-92
Filed: May 13, 1992
Certified# P 468 310 619

Marvin T. Runyon
Postmaster General, USPS

FINAL AGENCY DECISION

Appendix 28

This is the final agency decision of the Postal Service in the above referenced matter. In that complaint you, (hereinafter referred to the complainant) alleged discrimination on the basis of your sex (Male) when on March 19, 1992 Brenda Carmack verbally assaulted you in the presence of your supervisor who failed to take any action to put an end to the assault.
Under Title 29 CFR 1614.107 the complaint was investigated and Complainant was advised that if he was dissatisfied with the case file he could request a hearing before an Administrative Judge of the Equal Employment Opportunity Commission (EEOC) and to request such a hearing he must notify the Senior EEO Complaint Processing Specialist, Chicago District within thirty calendar days of receipt of the investigative file. Complainant was also advised that as an alternative, he could request a final agency decision on the investigative record without a hearing, and if he failed to request either within thirty calendar days of receipt of the case file, the agency has the right to issue it's final agency decision on the record or, dismiss the complaint for failure to prosecute pursuant to 29 CFR 1614.110.

A review of the records indicates that Complainant received the investigative file on October 10, 1992, via certified return receipt article number P369 509 989. Record review further indicates Complainant waived his right to a hearing with an Administrative Judge, and/or final agency decision on the investigative file without a hearing, as Complainant failed to make an election within the prescribed time frame. Complainant failed to prosecute 29 CFR1614.110.

Please be advised for the reasons contained herein Case No. 4-D-1576-92 is dismissed on the bases of failure to prosecute.

XVII

(*AEL Enclosure (12))
Selected documents from the 1992 EEO complaint file.

First Page, Enclosure (12)

EEO COMPLAINT OF DISCRIMINATION IN THE U S POSTAL SERVICE

Name: Lawson Alvin Rose SSN: -----6948
Address: 441 West Oakdale 2D Phone:312 327 8958 H
Chicago, IL 60657 312 765 4083 W
Title: Regular Mail Handler Pay Schedule: PS-4

Installation where You believe Discrimination Occurred:
Main P.O. Chicago, IL 60607

Name & title of person you believe Responsible for the Alleged act of Discrimination.
Barbara Owens, Supervisor/Mails

Type of Discrimination alleged:
Reverse Sexual Discrimination

I have discussed my complaint with an EEO counselor.
Yes…

Name of EEO counselor: Mrs. Florence Greenlee.

Corrective action sought:

A written admission from Supervisor Owens and an agreement not to do it again.

Lawson Alvin Rose date of this complaint:
May 1, 1992.

(*AEL Enclosure (12) second page)

U S POSTAL SERVICE
Equal Employment Opportunity Investigative
Affadavit.
Continuation Sheet page 2
Case#4D-1576-92

---

(2) What managers failed to address to correct the problem?

Mr. Magee did not properly address the profanity portion, and ***Mrs. Owens failed to fairly assign and equitably assign the jobs. The unwillingness of supervisors at the Post Office to follow the contract and be equitable in Job assignments is obvious.(italics supplied)***

(3) What are you seeking to help resolve the complaint?

A written admission of wrongdoing and ***an agreement by management not to assign preferential work assignments inequitably, and in particular because of gender.(italics supplied)***

Appendix 31

(*AEL Enclosure (12) third page)

Later in the week a bedload of sacks came in and I was called down to unload it after being told earlier to report to 1 East after lunch. When I had the dispatch and a bedload would come in, I always inquired why Mr. Mingo and myself would always have to unload it. The answer from the supervisor was that I had the dispatch and those that worked 1 West had to unload. Well that was disproven on Thursday 4/2/92. Ms. Carmack had the dispatch and I was still called back to unload it. Therefore it is not who you are or how much seniority you have, but your gender that determines your work assignments.

I called a union steward and complained and General Foreman Horne-Royster told the union steward that I had less seniority than Carmack, that's why I was called back to unload. Another boldfaced lie. When the Union steward the seniority list and found out that she was a boldfaced lie, the story was changed to another lie that Ms. Carmack was sent down before me. Another boldfaced lie. If indeed this was true, then my contractural rights were violated as I am supposed to be given first choice over Carmack because of my seniority.

This is what, in my opinion, led up to the

(*AEL Enclosure (12) fourth page)

swearing incident which Supervisor Magee witnessed. These are clear cases of managerial harassment and reverse sexual discrimination.(italics supplied)----------

---

- Submitted for action.
  L. A. Rose

Appendix 32

R.M.H. p/l 370

XVIII

(*AEL Enclosure 14)

Appeals Processing Center
Great lakes/Midwest Area

United States Postal Service

December 16, 1996

Lawson Alvin Rose
816 South Adams Street B-405
Westmont, IL 60559-2442

This is in response to the letter from Loretta Y. Watson, Chief Intake and Control Branch, Compliance and Control Division, Equal Employment Opportunity Commission, date December 3, 1996.

If you feel you are a victim of unlawful discrimination as described in Ms. Watson's letter, you should contact the:

Senior EEO Complaints Processing Specialist
Chicago District EEO Office
433 W. Harrison Street
Chicago, IL 60607-9411

Within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

Our computer research indicates that you filed formal EEO complaint 4-D-1576-92 in May, 1992. The Agency dismissed your complaint by Final Agency Decision date June, 1993. You never filed an appeal of that decision to Ms. Watson's office in Washington, D.C. We are unaware of any other EEO Complaint filed by you.

Sincerely,

JoAnne Jacobsen
A/EEO Compliance and Appeals Coordinator

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(@TMA Section C)

Shropshear v. Corp. Counsel of City of Chicago
Pg593 Cite as 275 F.3d 593 (7th Cir. 2001)

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3. **Limitation of Actions==13**

Equitable estoppel permits plaintiff to avoid bar of statute of limitations if defendant takes active steps to prevent plaintiff from suing in time, as by promising not to plead statute of limitations.----------

Appendix 34

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(@TMA Section C, second page)

To establish a prima facie claim under Title VII, an employee must have engaged in a " protected activity ", that is, an action taken to protest or oppose statutorily prohibited Discrimination.----------
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The plaintiff must also establish a causal connection between the protected activity and the adverse employment action.

(@TMA Section C, third page)

---plaintiff must prove discriminatory intent by fair preponderance of evidence----retaliatory motive must play part, but need not be sole cause of adverse employment action.----------retaliatory motive must be " but for " clause.

(@TMA Section B, first page)

However, most courts hold that a plaintiff may establish a prima facie case of religious discrimination by showing

that; (1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she has informed the employer of this belief; and (3) he or she was discharged or disciplined for refusing to comply with the conflicting employment requirement.----------
----------Once a prime facie case is established, ***the employer must then show that it has made a reasonable accommodation, or that one cannot be made without hardship. (italics supplied)***----------

(@TMA Section B second page)

----------***Where intentional religious discrimination under Title VII is alleged, a prima facie case is established only where the plaintiff demonstrates that the challenged employment decision was made by someone aware of the plaintiff's religion***

42 U.S.C.A. &2000e (j) Read together, these two sections impose an obligation on an employer to make reasonable accommodations to an employee's religious beliefs as long as the accommodations do not constitute an undue hardship on the employer's business.